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In re Application of :  
BENGMARK, Stig :  
U.S. Application No.: 09/355,665 :  
PCT No.: PCT/SE98/00145 :  
Int. Filing Date: 02 February 1998 :  
Priority Date: 04 February 1997 :  
Attorney Docket No.: SG-99224 :  
For: CATHETER FOR PROVIDING A FLUID :  
CONNECTION WITH THE SMALL :  
INTESTINE :

**DECISION ON  
PETITION FOR REVIVAL  
UNDER 37 CFR 1.137(b)  
AND REQUEST FOR REFUND**

This decision is in response to applicant's petition under 37 CFR 1.137(b) and request for a refund under 37 CFR 1.28 filed on 17 September 1999.

**BACKGROUND**

On 02 August 1999, applicant filed a transmittal letter for entry into the national stage in the United States under 35 U.S.C. 371 along with a check of \$876.00 for the basic national fee.

On 30 August 1999, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) for failing to provide the full U.S. Basic National Fee by thirty months from the earliest claimed priority date.

On 17 September 1999, applicant filed a petition to revive under 37 CFR 1.137(b) which was accompanied by, *inter alia*, a small entity statement; an executed declaration; and a request for refund.

On 12 March 2002, a "Status Inquiry" was filed.

On 28 April 2004, applicant resubmitted the papers originally filed 17 September 1999 along with a copy of a date-stamped postcard receipt for those papers.

On 05 May 2004, applicant submitted via facsimile authorization to pay the surcharge fee of \$65.00 pursuant to 37 CFR 1.492(e) from the refund request.

**DISCUSSION**

The papers filed 17 September 1999 were located in the above-captioned

application along with fees of \$130.00 to complete the basic filing fee and \$605.00 for the petition fee. However, these papers were not acted upon by the Office.

Accordingly, the documents submitted on 28 April 2004 attempting to show that applicants filed papers on 17 September 1999 are not required and moot. The papers filed 17 September 1999 will be answered below.

**Petition to Revive Under 37 CFR 1.137(b)**

A petition to revive an application on the grounds of unintentional delay pursuant to 37 CFR 1.137(b) must be accompanied by: (1) a proper reply; (2) the requisite petition fee; (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any required terminal disclaimer.

Here, applicant submitted a payment of \$130.00 for the remainder of the basic national fee of \$970.00 and total claim fee of \$36.00 minus the previous payment of \$876.00. This is an appropriate response. The petition fee of \$605.00 was submitted. Applicant's statement, "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional" satisfies the requirements of 37 CFR 1.137(b)(3). A terminal disclaimer is not required.

Thus, all the requirements of 37 CFR 1.137(b) have been satisfied.

**Request for Refund Under 37 CFR 1.28**

Applicant submitted a verified statement claiming small entity status and request for refund of one-half of the basic national fee paid of \$503.00 on 17 September 1999.

37 CFR 1.28 states, in part:

A refund pursuant to § 1.26 of this part, based on establishment of small entity status, of a portion of fees timely paid in full prior to establishing status as a small entity may only be obtained if a verified statement under § 1.27 and a request for a refund of the excess amount are filed within two months of the date of the timely payment of the full fee. The two-month time period is not extendable under § 1.136.

A review of the application file reveals that a verified small entity statement and request for refund have been filed within two months from the payment of the filing fees.

Thus, applicant qualifies for the refund pursuant to 37 CFR 1.28.

**DECISION**

For the reasons noted above, applicant's petition under 37 CFR 1.137(b) to revive the above-captioned application is hereby **GRANTED**.

Applicant's request for refund of one-half the basic national fee is also **GRANTED**.

Applicant submitted a declaration in compliance with 37 CFR 1.497(a) and (b) on 17 September 1999. Applicant also authorized that the surcharge fee of \$65.00 required by 37 CFR 1.492(e) be taken from money owed on the \$503.00 refund request. A check of \$438.00 will be mailed by the Finance Office to applicant.

Applicant has completed the requirements for acceptance under 35 U.S.C. 371(c). The application has an international filing date of 02 February 1998, under 35 U.S.C. 363 and a 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) date of 17 September 1999.

This application is being forwarded to the National Stage Processing Division of the Office of PCT Operations for continued processing.



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